

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERRY EZELL,

Plaintiff,

v.

SHAWNA McCANN,

Defendant.

Case No. C23-729RSM

ORDER OF DISMISSAL

This matter comes before the Court *sua sponte*. Plaintiff Terry Ezell, proceeding *pro se*, filed his Complaint on May 15, 2023, against Defendant Shawna McCann. Dkt. #1. On September 1, 2023, the Court issued a Minute Order striking Plaintiff's Motions for Summary Judgment and advising Plaintiff of the deadline to serve Defendants. Dkt. #14. The Court stated as follows:

The following MINUTE ORDER is made by direction of the Court, the Honorable Ricardo S. Martinez, United States District Judge: This case was originally opened on May 15, 2023. Dkt. #1. A notice of filing deficiency was mailed to Plaintiff Terry Ezell on May 17, 2023, informing him that the filing fee was not paid, the civil cover sheet was omitted, and that the proposed complaint lacked signatures from several Plaintiffs. Dkt. #4. Mr. Ezell later paid the filing fee and filed a civil cover sheet. The Court never received signatures from the other Plaintiffs, and they have been terminated as plaintiffs of record in this case.

On June 2, 2023, the Court mailed a blank summons to Mr. Ezell, to be served by him on Defendant Shawna McCann, along with a letter and instructions. Dkt. #5. The letter states "[y]ou are responsible for serving the Summons and a copy of the Complaint on the defendant in your case." Dkt. #5-1. The instructions state, in part:

1 After you file your lawsuit, you must serve your papers on the other
2 side, which means making sure they receive copies. Until the other
3 side receives the papers in a way that the law says is valid, they are
4 not a party to the lawsuit, and the case has not really begun. You
5 must give the other parties to your lawsuit a copy of every paper that
6 you file with the Court. This is called “serving” the other parties.
7 Serving your papers is critical. If you do not serve your papers on
8 the other parties in exactly the way required by law, it is as if you
9 never filed those papers at all.... The rules for serving the original
10 complaint are different from the rules for serving other papers, and
11 must be followed exactly. If the complaint is not properly served on
12 the other parties, the case will not proceed. Rule 4 of the Federal
13 Rules of Civil Procedure lays out the requirements for serving the
14 original complaint.... If you do not serve your complaint and
15 summons within 120 days of the day you filed the complaint, the
16 Court may dismiss your case.

17 Dkt. #5-2 at 1. The Court advises Mr. Ezell to carefully re-read all
18 the instructions as well as Rule 4 before serving Defendant McCann.

19 The Court has received no indication that Defendant McCann was
20 properly served. She has not appeared in this action.

21 On August 21, 2023, Mr. Ezell filed a Motion for Summary
22 Judgment. Dkt. #11. On August 31, 2023, Mr. Ezell filed an
23 Amended Motion for Summary Judgment without withdrawing his
24 prior Motion. Dkt. #13. Both Motions are unsigned and fail to
25 indicate they were served on Defendant McCann, who has not
26 appeared in this case and is not receiving copies of materials added
27 to the docket. Federal Rule of Civil Procedure 11(a) requires
28 Motions to be signed by the Plaintiff or his attorney. Federal Rule
of Civil Procedure 5 requires Motions to be served on the opposing
party. The Court has no indication that Mr. Ezell has served these
Motions on Defendant McCann, or that she is aware that this case
exists.

Given all of the above, the Court STRIKES both Motions for
Summary Judgment, Dkts. #11 and #13, as procedurally improper
and premature. Such motions are properly filed after a defendant
has appeared and responded to the complaint. Plaintiff has until
September 12, 2023, to serve Defendant McCann with a copy of the
complaint and summons as instructed above. If Plaintiff does not
file timely proof of service with the Court this case will be
dismissed.

1 *Id.* On September 13, 2023, the Court issued an Order to Show Cause stating, “[t]he Court
 2 believes Defendant McCann has not been properly served under Rule 4,” and, “[f]ailure to timely
 3 serve is a valid basis for dismissal of this case without prejudice.” Dkt. #17. The Court gave Mr.
 4 Ezell 14 days to respond. It has been three weeks and no response has been filed. Mail addressed
 5 to Mr. Ezell at his latest return address has been returned as undeliverable. Dkts. #16 and #18.
 6
 7 The Court has not received proof of service and Ms. McCann has not appeared.

8 Federal Rule of Civil Procedure 4(m) states in part:

9 If a defendant is not served within 90 days after the complaint is
 10 filed, the court—on motion or on its own after notice to the
 11 plaintiff—must dismiss the action without prejudice or order that
 12 service be made within a specified time. But if the plaintiff shows
 13 good cause for the failure, the court must extend the time for service
 14 for an appropriate period.

15 Fed. R. Civ. P. 4(m).

16 The Court finds that Defendant McCann has not been properly served under Rule 4.
 17 Failure to timely serve is a valid basis for dismissal of this case without prejudice.

18 Accordingly, the Court hereby finds and ORDERS that Plaintiff’s claims are
 19 DISMISSED without prejudice for failure to serve. The Court DIRECTS the clerk to send copies
 20 of this Order to Plaintiff at his current address of record AND to the address originally used in
 21 filing this case, 310 25th Avenue, Seattle WA 98122.

22 DATED this 3rd day of October, 2023.

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25 RICARDO S. MARTINEZ
 26 UNITED STATES DISTRICT JUDGE
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